In the Supreme Court of the United States.

OCTOBER TERM 1903.

WILLIAM K. VANDERBILT, ET AL., as Executors, &c., Plaintiffs in Error, (Plaintiffs below), AGAINST FERDINAND EIDMAN, as United States Collector of Internal Revenue, Defendant in Error. (Defendant below).	No. 615.

Motion to Advance.

On questions certified by the United States Circuit Court of Appeals for the Second Circuit.

And now come the plaintiffs in error and move the Court to advance this cause upon the docket and assign the same for early hearing at the October term, 1904.

This action was commenced in the United States Circuit Court for the Southern District of New York to recover of the defendant in error, a United States Collector of Internal Revenue, the sum of $311,681.36, which sum was assessed June 26th, 1901, the same being paid under protest, as a tax on a legacy arising from personal property, under the alleged authority of sections 29 and 30 of the War Revenue Act and the amendment thereof.

The defendant demurred on the general ground that the complaint did not state facts sufficient to constitute

a cause of action. The United States Circuit Court sustained the demurrer and judgment was thereupon entered. The plaintiffs in error sued out a writ of error from the United States Circuit Court of Appeals for the Second Circuit, and upon the argument thereof the Judges of said Court certified to this Court certain questions of law arising out of the facts stated in the complaint, concerning which the instruction of this Court is desired. The questions are substantially as follows:

FIRST: Where a person who died subsequent to June 13, 1898 and prior to July 1, 1902, bequeathed personal property to trustees for the benefit of certain persons in the alternative, to be distributed upon the happening of certain contingencies, did Sections 29 and and 30 of the Act of Congress of June 13, 1898, impose a tax, occasioned by the transfer of the property, upon the transmission thereof to and the receipt thereof by the trustees, computed upon the cash value of the property, or

SECOND: Did said Sections impose a tax in such case upon the transmission or receipt of a beneficial interest in such property occasioned by the passing of such interest to the beneficiary thereof and computed upon the clear value of such beneficial interest?

THIRD: Where such beneficial interest arising from a legacy of personal property so held in trust, was a future interest and was conditioned upon the beneficiary reaching a certain age, did Sections 29 and 30 authorize the assessment and collection of a tax with respect to such interest prior to the time when, by the happening of the conditions upon which the legacy was limited, the property composing such legacy finally should become vested in the possession or enjoyment of such beneficiary?

FOURTH: Is the value of an interest in a legacy which is future and subject to be defeated by the death

of the beneficiary before it comes into actual possession or enjoyment equal, for the purpose of computing the tax assessed under Sections 29 and 30 of said Act, to the full cash value of the personal property passing to the trustees as aforesaid, and with respect to which such interest arises?

The Circuit Court held in this case that where a testator who died while the Act of June 13, 1898, was in force bequeathed personal property to trustees a tax became immediately assessable and collectible upon the transfer of the trust property to his trustees irrespective of the nature, character or value of the beneficial interests therein, and irrespective of the question whether at the time of the testator's death there was in existence any person entitled to a beneficial interest therein, and that the tax should be computed upon the full cash value of the trust property at that time. (121 Fed. 590.)

The questions certified are of great public importance, and until they are definitely and authoritatively determined by this Court they will continue to be a source of embarrassment to the owners of property and to the officers of the Government charged with the execution of the Internal Revenue laws. The settlement of a large number of estates in different sections of the country is now in abeyance awaiting the final determination of these questions, upon which their liability to a payment of a tax to the United States depends.

Counsel for the plaintiffs in error is authorized to say that at the request of the Secretary of the Treasury, who regards the early decision of the questions presented in this case of great importance to that Department, the Attorney General concurs in this motion.

Respectfully submitted,

CHANDLER P. ANDERSON,

Counsel for Plaintiffs in Error.